No. 25-1380

IN THE

United States Court of Appeals for the First Circuit

JASON GRANT, ALLISON TAGGART, LISA PETERSON, AND SAMANTHA LYONS

Plaintiffs-Appellants,

v.

TRIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS, BEVERLY CANNONE, GEOFFREY NOBLE, MICHAEL D'ENTREMONT, AND MICHAEL W. MORRISEY,

Defendants-Appellees.

On Appeal from the United States District Court for the District of Massachusetts
Case No. 1:25-cv-10770-MJJ
The Honorable Myong J. Joun

MOTION OF DEANNA CORBY, KEITH BRALEY, AND ROBIN BRALEY FOR LEAVE TO FILE AMICI CURIAE BRIEF

April 25, 2025

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MOTION FOR LEAVE TO FILE AMICI CURIAE BRIEF

NOW COME Deanna Corby, Keith Braley, and Robin Braley, and MOVES for leave to file an Amicus brief in the above-captioned matter. As grounds for this motion, Amici say:

1. The movants have an interest in this matter in two respects. First, they are, like the Plaintiffs, persons who have an interest in free expression that is limited by the Order that is the subject matter of this case. Second, each of the Amici has already been the subject of legal proceedings involving an unduly broad interpretation of existing law affecting the Karen Read Trial protests. Although such legal proceedings were all terminated in their favor, Amici bring an acute understanding of the chilling effect of overly broad governmental measures directed at freedom of assembly and freedom of speech.
2. The Amicus Curiae brief sought to be introduced is short, concise, and to the point.
3. It provides an alternative perspective on some of the issues in this matter that is largely not duplicative of the briefs of the parties.
4. The Amici believe that the submission will function as an aid to the Court in its consideration of the significant issues involved in the matter and assist the Court with its deliberations.

WHEREFORE, for the foregoing reasons, the undersigned respectfully requests this Court allow this motion for leave to file an Amicus brief in support of the Appellants/Plaintiffs.

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CERTIFICATE OF SERVICE

I certify that on April 28, 2025 the foregoing was electronically filed through this Court's CM/ECF system, which will send a notice of filing to all registered users.

/s/ William E. Gens
William E. Gens

No. 25-1380

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United States Court of Appeals for the First Circuit

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Plaintiffs-Appellants,

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TRIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS, BEVERLY CANNONE, GEOFFREY NOBLE, MICHAEL D'ENTREMONT, AND MICHAEL W. MORRISEY,

Defendants-Appellees.

On Appeal from the United States District Court for the District of Massachusetts
Case No. 1:25-cv-10770-MJJ
The Honorable Myong J. Joun

BRIEF *AMICI CURIAE* OF THE "CANTON 9" PROTEST GROUP MEMBERS IN SUPPORT OF PLAINTIFFS-APPELLANTS

April 25, 2025

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RULE 26.1 DISCLOSURE STATEMENT

Amici curiae "Canton 9 members" are a group of individuals with no parent corporation, and no publicly held corporation owns 10 percent or more of its stock.

/s/ William E. Gens
William E. Gens

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STATEMENT OF INTEREST OF AMICI CURIAE

Amici are three members of a group of protesters that became known in the media as the "Canton 9". This group was prosecuted for standing silently on Main Street in Canton Massachusetts while holding signs with messages stating "Justice for Karen Read" and "Free Karen Read". The prosecutorial claim against Canton 9 was that down the street from the site of their protest a minor witness in the Karen Read trial owned a pizza shop. Those circumstances yielded charges of witness intimidation. All of the charges against the Canton 9 were dismissed following court proceedings.

Each of the Amici and other Canton 9 protesters have also participated in peaceful protests in the vicinity of the Norfolk County Superior Court where the Karen Read case has been held. Their protest rights are abridged by the Court order in this matter here, for which they have never had an opportunity to contest the order in question. Their rights to assembly and freedom of expression have been chilled by the prosecutions that have been mounted against them (even though unsuccessfully) and are chilled further by the restrictions in the order of the Norfolk Superior Court. They are representative of thousands of other citizens seeking to express their views on this matter and bring a perspective to this issue that is a direct byproduct of the legal measures targeted against the exercise of their First-Amendment rights.

INTRODUCTION

This Amicus submission will confine itself to two points: the first will evaluate the order of the Norfolk Superior Court with regard to the due process implications in that affected parties such as the Amici have no notice, much less opportunity to be heard, to present evidence, to contest the assertions of the governmental moving party, or anything else associated with due process. Just as significantly, the mechanisms available to citizens in a legislative setting including public comment, debate, lobbying, and representative voting, are all abandoned when matters are decided by judicial edict. The public is disenfranchised when legislative mechanisms are commandeered by judicial authorities. The order of the Norfolk Superior Court, to the extent that it extends beyond the grounds of the courthouse and encompasses both public and private property falling within the 200 to 400-foot radius and additional areas in the modified order usurps a legislative function.

The second portion of the argument will examine the order of the Norfolk Superior Court as if it were a legitimate legislative enactment and will demonstrate how it fails as a "reasonable time, place, and manner" restriction because it is content-based and is not narrowly-tailored to a compelling government interest.

ARGUMENT

I. THE NORFOLK SUPERIOR COURT WENT BEYOND ITS INHERENT AUTHORITY AND ABANDONED FUNDAMENTAL DUE PROCESS IN ISSUING AN ORDER RESTRICTING FREEDOM OF EXPRESSION BEYOND THE COURTHOUSE FACILITIES

A. The Norfolk Superior Court Exceeded its Inherent Power over Property Under its Control by Unilaterally Limiting Rights of Assembly and Speech on Adjoining Public and Private Lands.

As a threshold matter, there is little doubt that governmental branches, including courthouses, have the authority to limit speech and conduct on property under the direct control of the government. The law supporting this principle is abundant. For example, "The State, no less than a private owner of property, has power to preserve the property under its control for the use to which it is lawfully dedicated." *Adderley v. State of Florida*, 385 U.S. 39, 47 (1967). "[T]he First Amendment does not guarantee access to property simply because it is owned or controlled by the government." *United States Postal Service v. Greenburgh Civic Association*, 453 U.S. 114, 129 (1981).

When legislation limiting First Amendment rights is enforced beyond the boundaries of a courthouse and its grounds, the Constitutionality of such legislation is much less clear. In *United States v. Grace*, the Supreme Court held that the public sidewalks forming the perimeter of the Supreme Court grounds are traditional public forums, just like other public sidewalks, and that a federal statute prohibiting

parading, picketing and similar activity on those sidewalks was unconstitutional. *United States v. Grace*, 461 U.S. 171, 177 (1983). In an earlier case, the Supreme Court in *Cox v. Louisiana*, 379 U.S. 559 (1965), upheld a state statute prohibiting picketing or parading "in or near a building housing a court" when the demonstration is intended to interfere[1] with or impede justice or to influence a judge, juror, or court officer.

What distinguishes the above cases and all other cases the Amici have been able to find that restrict First Amendment activities beyond the perimeter of courthouse grounds, is that all of these cases deal with **legislative** enactments that followed a well-defined legislative process. This matter instead involves an act of judicial fiat that falls far short of the representative legislative process.

The problem with a judicial legislative type edict or decree goes beyond a simple separation of powers problem.[2] As an illustration, let us suppose that the

[1] A noteworthy feature of *Cox v. Louisiana* is that, while it shares the same goal of preserving order and tranquility for courtroom proceedings, the statute is far more narrowly-drafted than the Norfolk Superior Court's Order because encompasses only activities "**intended** to interfere with, obstruct, or be offensive to others" and does not restrict any and all demonstrations, signs, or even silent prayer as does the Norfolk Superior Court Order on its face. *Id* at 589 n.2. This issue will be further discussed later in this brief.

[2] Amici are well aware that the Massachusetts Supreme Judicial Court in *Desrosiers v. Governor*, 486 Mass. 369 (2020) abandoned any adherence to the separation of powers provisions of Article 30 of the Massachusetts Declaration of Rights ("*the executive shall never exercise the legislative and judicial powers, or either of them: the judicial shall never exercise the legislative and executive*

order in question in this matter issued from the Mayor or Town Manager of Dedham Massachusetts (as opposed to an ordinance of the City Council or a state statute). The lack of legislative authority of the Mayor and his or her encroachment upon legitimate legislative functions would be quite clear and entirely distinguishable from whatever merit the order possessed. It is an analysis that should be undertaken before any Constitutional analysis of whatever restrictions such an order imposed upon free speech or assembly.

B. The Order of the Norfolk Superior Court Does Not Warrant the Deference Customarily Granted to Legislative Action

It is the contention of the Amici that the Order of the Norfolk Superior Court over both public and private lands not within the perimeter or even the sidewalks of the Courthouse grounds resembles an act of legislation, but without any of the legitimizing features of the actual legislative process. It also abandons all of the procedural safeguards granted to non-parties in court proceedings.

Actual legislation consists of the essential activities legislators engage in and the governmental transparency and democratic participation that flow from these activities. Legislators draft bills, those drafts are open to public scrutiny and input. Legislators debate bills and conduct hearings in connection with them and those are

powers, or either of them: to the end it may be a government of laws and not of men"). The problem here is that the actions of the court depart from the principles of representative government quite apart from the separation of powers issue.

likewise available to the public and for the public to make known their wishes and concerns to their legislators. Legislators furthermore vote on bills and give the public a record of the position they have taken. Finally, legislators are accountable to the people at regularly held elections. Judges in this jurisdiction neither acquire their positions through public voting nor are they subject to the electoral process to retain their position. Ultimately, the order of the Norfolk Superior Court falls far short of legislative due process and does not warrant any deference normally accorded to legitimate legislative enactments.

Courts regularly adjudicate matters affecting nonparties and the public alike. However, procedural mechanisms that safeguard due process are readily available to provide due process to nonparties. In a criminal case courts routinely entertain motions requiring nonparties to take certain actions. Massachusetts Rules of Criminal Procedure Rule 17(a)(2) provides for the production of documentary evidence and objects by nonparties. Addendum p. 2. This rule provides, however, for notice to the nonparties and a mechanism for them to bring a motion to quash or modify the order sought. Nothing resembling this minimal due process was afforded to the Plaintiffs, the public, or any other nonparties to the criminal case that yielded the order.

The Memorandum Decision of the District Court manifests a parsimonious conception of due process. First, the District Court entirely ignores the lack of

notice provided to the public – even by way of time-tested court mechanisms such as publication (routinely utilized in matters such as will contests, foreclosures, and land disputes). Second, the District Court conflates the Norfolk Trial Judge's receiving input from a group of local business owners with an opportunity to be heard by the public at large. How such a group of local business owners got notice of the Commonwealth's motion for a buffer zone (see page 9 of the Memorandum Decision), whether by rumor, by a tip from the State Police (who are both participants in the proceedings and strong advocates for the "buffer zone"), or some other diffuse mechanism is entirely unresolved. For the District Court to conclude that such "participation" is the equivalent of due process for the public is a false equivalency.

Alternatively, the District Court Memorandum Decision at page 9 states that because "there is nothing in the record to indicate that the trial judge restricted the Plaintiffs from voicing their opinions prior to the issuance of the Second Order." Apparently, according to the District Court, an absence of due process requires an affirmative measure to restrict the Plaintiff or the public from participation in a judicial process, as opposed to simply not providing any mechanism for either notice or for such participation. This dispensation is a threadbare application of due process that does not accord with our Constitutional traditions and is more commensurate with a societal vision that only values expediency if not an outright diminution of

the value of public participation. Finally, the lack of due process taints the record in these proceedings and the District Court's reliance upon that record by ensuring an incomplete and partisan showing in the proceedings under review.

II. EVEN WHEN VIEWED AS THE EQUIVALENT OF AN LEGISLATIVE ENACTMENT AND LEAVING ASIDE DUE PROCESS DEFICIENCIES, THE NORFOLK SUPERIOR COURT ORDER FAILS CONSTITUTIONAL SCRUTINY

A. The Norfolk Superior Court Order Serves Limited Legitimate Interests

It must be conceded that several legitimate interests are served by an order restricting activities at the courthouse. The first of these is obviously a prohibition impeding access to the courthouse and keeping the entranceway free of obstructions. The second would be to maintain the decorum and harmonious function of court proceedings from disruptive noise, to the extent that such noise is not already addressed by existing noise regulations and criminal statutes such as disturbing the peace, etc. Another arguable concern is to protect jurors and witnesses from extraneous influences to the extent that such influences are not already policed by statutory enactments such as witness intimidation, obstruction of justice, etc.

The Order of the Norfolk Superior Court, however, goes well-beyond these legitimate objectives and represents a clumsy approach that is both over and under-inclusive.

B. The Norfolk Superior Court Order is Facially Overbroad

The order in question provides that:

> *[N]o individual may demonstrate in any manner, including carrying signs or placards within 200 feet of the courthouse complex … the buffer zone shall further be extended to include the area bounded by bates court, bullard street, ames street, and court street.*

Addendum p 11 is a scaled map with boundaries for the Court's reference in interpreting the Norfolk Superior Court's Order. Before discussing the sheer enormity of the buffer zone, other overly broad features of the order warrant discussion.

A fair reading of this order yields two possible interpretations with regard to what "demonstrate" means. The first possible interpretation is that "demonstrate" applies to any and all political speech, signs, or placards within the buffer zone. Under this interpretation, none of the numerous homes and residences within the buffer zone could display a sign, placard or banner of any nature without running afoul of the Order. This would include, without limitation: a Black Lives Matter sign; a Pride flag; a Ukraine flag, or even conceivably an American flag. All automobiles with bumper stickers of any political import would be prohibited from parking upon the streets, private driveways, or even passing through the buffer zone. No individual could walk through the buffer zone with a political t-shirt or patch. Silent prayer, even blocks away from the courthouse, could be construed as a form of demonstration such as it has been at abortion clinics. These and other potential

violations too numerous to catalogue are potentially actionable under this interpretation of the Norfolk Superior Court's Order. Such an interpretation is clearly overly broad and not even remotely narrowly-tailored to any interest.

The second possible interpretation is that "demonstrate," along with the signs and placards prohibition, only applies to messages pertaining to the Karen Read trial. Although this interpretation avoids some of the substantial overbreadth problems of the former interpretation, it undermines the District Court's conclusion that the Order is content-neutral. Even though such an interpretation would provide equal treatment to diverging views on the Karen Read trial, it is clearly content-based in that it censors all expression on a particular subject matter. Amici submit that if this interpretation is adopted, the restrictions in the Order are not content-neutral as concluded by the District Court and it must therefore satisfy strict scrutiny: the least restrictive means of achieving a compelling state interest.

Another way that the Order is overbroad and overly inclusive is, of course, the sheer magnitude of the buffer zone. This was apparently justified because some individuals were generating excessive noise and/or urging passing motorists to join in with such noisemaking. Instead of relying upon the enforcement of existing noise regulations or the enforcement of various criminal statutes mentioned above, or narrowly-tailoring the Order to target such conduct, the Order simply prohibits all manner of public expression within a broad geographical area and prohibits even the

most sedate and orderly form of protests including arguably silent prayer.

The Norfolk Superior Court relied virtually exclusively upon the case *Ward v. Rock Against Racism*, 491 U.S. 781, 799 (1989). There are significant distinctions in this matter from *Ward*. *Ward*, like the other cases cited herein, involved restrictions coming from a duly constituted legislative body of the City of New York. *Ward* also was a truly content neutral matter that only involved noise regulation. More fundamentally *Ward*, although perhaps not as narrowly-tailored as it could be, was essentially directed at the actual source of the noise rather than at the public at large, despite the fact that every member of the public is capable of some noise making.

The indiscriminate treatment of all potential demonstrators over a broad geographical area – over 400 feet from the courthouse perimeter and including locations out of sight of the courthouse – is overly broad and unwarranted. This is especially so where traditional forums for public speech are restricted far more than necessary to achieve an asserted governmental interest. See e.g., *McCullen v. Coakley*, 573 U.S. 464, 490 (2014) (Supreme Court invalidates 35 foot "buffer zone" for protests at abortion clinics designed to inhibit disruption and intimidation for those accessing the clinics).

With regard to the concern of unduly influencing jurors and potential jurors, the Order of the Norfolk Superior Court is woefully underinclusive in the

circumstances of the case. Addendum p. 12 is a broadcast statement of the moving party for the buffer zone, Norfolk County District Attorney Michael Morrissey. This statement was issued prior to jury selection in the matter and is still broadcast on numerous large platforms on the internet. This statement vouches for the credibility of government witnesses, deems all competing theories of the evidence "conspiracy theories," vouches for the integrity of the now disgraced and terminated[3] lead investigator for the State Police, and expressly states that "every suggestion to the contrary is a lie."

Leaving aside the dubious ethical propriety of this statement, it is difficult to imagine how a rag-tag group of protesters could, in any way, influence potential jurors and actual jurors to a degree even remotely equivalent to that of the District Attorney's public remarks. Nevertheless, the Norfolk Superior Court's Order, whilst bemoaning the potential effect of the messages from some protesters, has not issued any orders restraining or remedying the actions of the District Attorney – other than granting his motion to silence the protesters.

[3] See Addendum P. 21 for NBCNews.com Article Regarding Trooper Michael Proctor's firing.

CONCLUSION

For the foregoing reasons, this Court should vacate the District Court's Order.

Respectfully submitted,

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April 28, 2025

CERTIFICATE OF COMPLIANCE

1. This document complies with the type-volume limits of Fed. R. App. P. 32 because, excluding the parts of the document exempted, this document contains 2,836 words.

2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using 14-point Times New Roman.

/s/ William E. Gens
William E. Gens

CERTIFICATE OF SERVICE

I certify that on April 28, 2025 the foregoing was electronically filed through this Court's CM/ECF system, which will send a notice of filing to all registered users.

/s/ William E. Gens
William E. Gens

ADDENDUM

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2. Scaled Map of Norfolk Superior Court……..…A11

3. WCVB Article Containing August 2023 Statement of Norfolk County DA…….……A12

4. NBCNews Article "Michael Proctor, lead investigator in Karen Read case, fired from Massachusetts State Police after vulgar texts…...…….……A21

RULES OF CRIMINAL PROCEDURE

Criminal Procedure Rule 17: Summonses for witnesses

EFFECTIVE DATE: 07/01/1979

(Applicable to District Court and Superior Court)

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(d) Service (#-d-service)

(e) Failure to appear (#-e-failure-to-appear)
Reporter's notes (#reporter-s-notes)
Downloads (#downloads)
Contact (#contact)

(a) Summons

(1) For attendance of witness; form; issuance

A summons shall be issued by the clerk or any person so authorized by the General Laws. It shall state the name of the court and the title, if any, of the proceeding and shall command each person to whom it is directed to attend and give testimony at the time and place specified therein.

(2) For production of documentary evidence and of objects

A summons may also command the person to whom it is directed to produce the books, papers, documents, or other objects designated therein. The court on motion may quash or modify the summons if compliance would be unreasonable or oppressive or if the summons is being used to subvert the provisions of **rule 14** (/rules-of-criminal-procedure/criminal-procedure-rule-14-pretrial-discovery-from-the-prosecution). The court may direct that books, papers, documents, or objects designated in the summons be produced before the court within a reasonable time prior to the trial or prior to the time when they are to be offered in evidence and may upon their production permit the books, papers, documents, objects, or portions thereof to be inspected and copied by the parties and their attorneys if authorized by law.

(b) Defendants unable to pay

At any time upon the written ex parte application of a defendant which shows that the presence of a named witness is necessary to an adequate defense and that the defendant is unable to pay the fees of that witness, the court shall order the issuance of an indigent's summons. The witness so summoned shall be paid in accordance with the provisions of subdivision (c) of this rule. If the court so orders, the costs incurred shall be assessed to the defendant in accordance with the General Laws or the provisions of these rules.

(c) Payment of witnesses

Expenses incurred by a witness summoned on behalf of a defendant determined to be indigent under this rule as well as expenses incurred by a witness summoned on behalf of the Commonwealth, as such expenses are determined in accordance with the General Laws, shall be paid after the witness certifies in a writing filed with the court the amount of his travel and attendance

(d) Service

(1) By whom; manner

A summons may be served by any person authorized to serve a summons in a civil action or to serve criminal process. A summons shall be served upon a witness by delivering a copy to him personally, by leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, or by mailing it to the witness' last known address.

(2) Place of service

(A) Within the Commonwealth

A summons requiring the attendance of a witness at a hearing or a trial may be served at any place within the Commonwealth.

(B) Outside the Commonwealth or abroad

A summons directed to a witness outside the Commonwealth or abroad shall issue and be served in a manner consistent with the General Laws.

(3) Return

The person serving a summons pursuant to this rule shall make a return of service to the court.

(e) Failure to appear

If a person served with a summons pursuant to this rule fails to appear at the time and place specified therein and the court determines that such person did receive actual notice to appear, a warrant may issue to bring that person before the court.

Reporter's notes

The prototype for this rule is found in Fed.R.Crim.P. 17. See Massachusetts and Federal Rule of Civil Procedure 45; Rules of Criminal Procedure (U.L.A.) Rule 731 (1974). Rule 17 is for the most part in accord with prior Massachusetts law. Statutes which are consistent with this rule--e.g., **G.L. c. 233, §§ 5-6** (https://malegislature.gov/Laws/GeneralLaws/PartIII/TitleII/Chapter233/Section5), which authorize sanctions for a witness' failure to comply with a summons--are to remain in effect.

"Summons" as used in this rule (and **Mass.R.Crim.P. 35[b]** (/rules-of-criminal-procedure/criminal-procedure-rule-35-depositions-to-perpetuate-testimony#-b-summonses)) is intended to refer to what has traditionally been expressed by the terms "summons" and "subpoena."

The right of a defendant to have process issued for the attendance of necessary witnesses is founded in the Constitution:

> [I]t is the Sixth Amendment itself that in terms guarantees 'compulsory process for obtaining witnesses in [the accused's] favor,' and this is paralleled in substance by article 12 of our Declaration of Rights.

Blazo v. Superior Court (https://www.courtlistener.com/opinion/2088110/blazo-v-superior-court), 366 Mass. 141, 145 (1974). A defendant's right to have summonses issued on his behalf may also be grounded in the sixth amendment right of confrontation.

Subdivision (a).

This subdivision is drawn with little change from Fed.R.Crim.P. 17(a), (c); accord Rules of Criminal Procedure (U.L.A.) rule 731(a), (c) (1974).

Subdivision (a)(1). **General Laws c. 233, § 1** (https://malegislature.gov/Laws/GeneralLaws/PartIII/TitleII/Chapter233/Section1)provides that persons in addition to the clerk of court, i.e., notaries public and justices of the peace, may issue summonses for witnesses in criminal cases but only "upon request of the attorney general, district attorney or other person who acts in the case in behalf of the Commonwealth or of the defendant." The proceedings contemplated by this subdivision include depositions to perpetuate testimony pursuant to **Mass.R.Crim.P. 35** (/rules-of-criminal-procedure/criminal-procedure-rule-35-depositions-to-perpetuate-testimony).

Subdivision (a)(2). The provision of this subdivision authorizing the court to order the production of evidence prior to its use at trial or in other judicial proceedings is not intended to permit the use of summonses to subvert the discovery rule, **Mass.R.Crim.P. 14** (/rules-of-criminal-procedure/criminal-procedure-rule-14-pretrial-discovery-from-the-prosecution). Rather, it is to permit the court to avoid delay where the production of many books, papers, documents, or

other objects would delay the proceedings if not ordered until their commencement.

Subdivision (b).

The subdivision, loosely modeled upon Fed.R.Crim.P. 17(b), is drafted in response to the Supreme Judicial Court's decision in **Blazo v. Superior Court** (https://www.courtlistener.com/opinion/2088110/blazo-v-superior-court), 366 Mass. 141 (1974). There the court held that when indigency and the necessity for witnesses are shown, a defendant is to have the witnesses summoned at the expense of the Commonwealth, suggesting the following procedure:

> [A] defendant believing himself entitled will apply to the competent judge--ex parte if the defendant should so desire--supporting his application by affidavit showing his inability to pay the fees involved, setting out the names and addresses (if known) of the persons to be summoned, and stating why their attendance is necessary to an adequate defence. The judge may require the submission of further data.

Id. at 145-46 (footnote omitted). The court further explained that the reason for permitting ex parte application

> is that, just as a defendant able to foot the costs need not explain to anyone his reasons for summoning a given witness, so an impecunious defendant should be able to summons his witnesses without explanation that will reach the adversary. Id. at 145 n. 8.

There is a significant difference between this subdivision and its counterpart under the federal rule. The summons that is to be issued under this rule is a prosecutor's summons, **G.L. c. 277, § 68** (https://malegislature.gov/Laws/GeneralLaws/PartIV/TitleII/Chapter277/Section68), and not a court summons, **G.L. c. 233, § 1** (https://malegislature.gov/Laws/GeneralLaws/PartIII/TitleII/Chapter233/Section1). This is because **G.L. c. 233, § 3** (https://malegislature.gov/Laws/GeneralLaws/PartIII/TitleII/Chapter233/Section3)provides that witnesses summoned on behalf of the defendant are entitled to prepayment of some of their expenses. If this requirement were applicable to witnesses for indigent defendants, an added burden would be imposed on the court clerks. Therefore, witnesses for indigent defendants are to be summoned by the Commonwealth pursuant to **G.L. c. 277, §§ 68-69** (https://malegislature.gov/Laws/GeneralLaws/PartIV/TitleII/Chapter277/Section68), and will not require prepayment. This procedure parallels that of Rules of Criminal Procedure (U.L.A.) Rule 731(b) (1974). Compare Fed.R.Crim.P. 17(b), (d).

Subdivision (c).

The expenses involved in securing the attendance of a witness on behalf of a defendant or the Commonwealth in a criminal proceeding consist of the fees of the officer serving the process and fees to the witness for travel and attendance. G.L. c. 233, §§ 2-3 (https://malegislature.gov/Laws/GeneralLaws/PartIII/TitleII/Chapter233/Section2); c. 262, §§ 8(B)(3), 29 (https://malegislature.gov/Laws/GeneralLaws/PartIII/TitleVI/Chapter262/Section8).

General Laws c. 262, § 29 (https://malegislature.gov/Laws/GeneralLaws/PartIII/TitleVI/Chapter262/Section29)requires that a witness certify in writing the amount of his travel and attendance costs and serves as a basis for this subdivision. The statute additionally provides that where the witness has been summonsed by the Commonwealth, the certificate must be accompanied by a voucher signed by the attorney general or the district attorney stating that such fees are due the witness for his attendance. This rule adds witnesses summonsed by indigent defendants to this category and provides for the payment of their expenses in the same manner as the expenses of Commonwealth witnesses are paid. Where the district attorney is prosecuting the case, G.L. c. 12, § 24 (https://malegislature.gov/Laws/GeneralLaws/PartI/TitleII/Chapter12/Section24)(as amended, St.1978, c. 478, § 10) authorizes the payment of expenses of government-summonsed witnesses from Commonwealth funds. See G.L. c. 213, § 8 (https://malegislature.gov/Laws/GeneralLaws/PartIII/TitleI/Chapter213/Section8), which the Supreme Judicial Court in Blazo stated would authorize county payment (now the Commonwealth, § 8 as amended, St.1978, c. 478, § 127) of witnesses ordered to attend on behalf of an indigent defendant. Blazo v. Superior Court, supra, at 146.

Under this rule, all witnesses are to be paid established witness fees. This is a departure from prior law, G.L. c. 277, § 69, which required prosecution witnesses to attend without pay unless the court directed the payment of their fees and expenses.

Subsection (d).

The first sentence of subdivision (d)(1) embodies the substance of Mass.R.Civ.P. 45(c) (/rules-of-civil-procedure/civil-procedure-rule-45-subpoena#-c-service), which permits service "by any person who is not a party and is not less than 18 years of age." Compare Fed.R.Civ.P. 45(c) with Fed.R.Crim.P. 17(d). This procedure accords with that under G.L. c. 233, § 2 (https://malegislature.gov/Laws/GeneralLaws/PartIII/TitleII/Chapter233/Section2), which provides that a summons for a witness may be served by an officer qualified to serve civil process or by some other disinterested person. Added is provision for service of summonses by persons authorized to serve criminal process. The rule would appear to allow service by counsel for the defendant or Commonwealth, although this practice has been criticized as perhaps "unwise." 8 MASS. PRACTICE SERIES (Smith & Zobel) Reporter's Notes at 136 (1977); compare Supreme Judicial Court Rule 3:22, incorporating ABA Canons of Professional Ethics, Canon 19 (1972); ABA Code of Professional Responsibility DR 5-102, EC 5-9, 5-10 (1970).

The manner of service under this rule is for the most part consistent with procedure under prior law and the civil rules, G.L. c. 233, § 2 (https://malegislature.gov/Laws/GeneralLaws/PartIII/TitleII/Chapter233/Section2); Mass.R.Civ.P. 45(c) (/rules-of-civil-procedure/civil-procedure-rule-45-subpoena#-c-service), but adds that a summons may be served by mail. This last means of service is not available in cases of witnesses summonsed by non-indigent defendants, since tender or payment of fees to the witness is a prerequisite to compelling his attendance. G.L. c. 233, § 3 (https://malegislature.gov/Laws/GeneralLaws/PartIII/TitleII/Chapter233/Section3).

Subdivision (d)(2)(A) is taken from the second sentence of Mass.R.Civ.P. 45(e) (/rules-of-civil-procedure/civil-procedure-rule-45-subpoena#-e-subpoena-for-a-hearing-or-trial).

General Laws c. 233, §§ 13A-13C (https://malegislature.gov/Laws/GeneralLaws/PartIII/TitleII/Chapter233/Section13A); otherwise known as the Uniform Law to Secure the Attendance of Witnesses from Without the State in Criminal Proceedings, provides a simple solution to the problem of obtaining out-of-state witnesses to appear in criminal proceedings. As long as the subject jurisdiction has adopted the Act the court will be able to secure attendance. Notwithstanding the provisions of G.L. c. 233, §§ 13A-13C and c. 277, § 66 (https://malegislature.gov/Laws/GeneralLaws/PartIV/TitleII/Chapter277/Section66), it has been stated that the right of a defendant to compulsory process for witnesses who are necessary to his defense does not by statute automatically extend beyond the territory of the Commonwealth. Commonwealth v. Dirring (https://www.courtlistener.com/opinion/2104795/commonwealth-v-dirring), 354 Mass. 523 (1968). Accord Commonwealth v. Edgerly (https://www.courtlistener.com/opinion/2216193/commonwealth-v-edgerly), 6 Mass. App. Ct. 241 (1978).

Even though a defendant may not have the statutory right to compulsory process for necessary witnesses, the Constitution requires that the state make a good faith effort to obtain the presence of certain witnesses. In addition to the Uniform Act, state courts should avail themselves of two other avenues to secure the attendance of witnesses. The court in Barber v. Page (https://scholar.google.com/scholar_case?case=3431242362629837602), 390 U.S. 719 (1968), determined that where the defendant has a constitutional right to confront a witness, a state must seek his attendance via: (1) 28 U.S.C. § 2241(c)(5) (https://www.law.cornell.edu/uscode/text/28/2241)(1971), which gives federal courts the power to issue writs of habeas corpus ad testificandum at the request of state prosecutors in the case of the prospective witnesses currently in federal custody; and (2) the issuance of a writ of habeas corpus ad testificandum by state courts. The existing policy of the United States Bureau of Prisons is to permit federal prisoners to testify in state court criminal proceedings pursuant to the issuance of such writs.

With respect to witnesses who are citizens or residents of the United States, but currently beyond its jurisdiction, the Court in Mancusi v.

> **Stubbs** (https://scholar.google.com/scholar_case?case=6187570570426780502), 408 U.S. 204 (1972), enunciated the limitations of the applicability of 28 U.S.C. § 1783 (1966), which provides in pertinent part:
>
> > (a) A court of the United States may order the issuance of a subpoena requiring the appearance as a witness before it, or before a person or body designated by it, of a national or resident of the United States who is in a foreign country, or requiring the production of a specified document or other thing by him, if the court finds that particular testimony or the production of the document or other thing by him is necessary in the interest of justice
>
> With respect to § 1783, the court stated:
>
> > We have been cited to no authority applying this section to permit subpoena by a federal court for testimony in the state felony trial, and certainly the statute on its face does not appear to be designated for that purpose.
>
> Id. at 212. (Footnote omitted.)
>
> The Mancusi court concluded that Tennessee was powerless to compel the attendance of the absent witness, then a resident of Sweden, and that, therefore, the state had not denied the respondent the right of confrontation as guaranteed by the sixth and fourteenth amendments.

Downloads

Massachusetts Rules of Criminal Procedure
(https://www.mass.gov/doc/massachusetts-rules-of-criminal-procedure/download) (English, PDF 2.87 MB)

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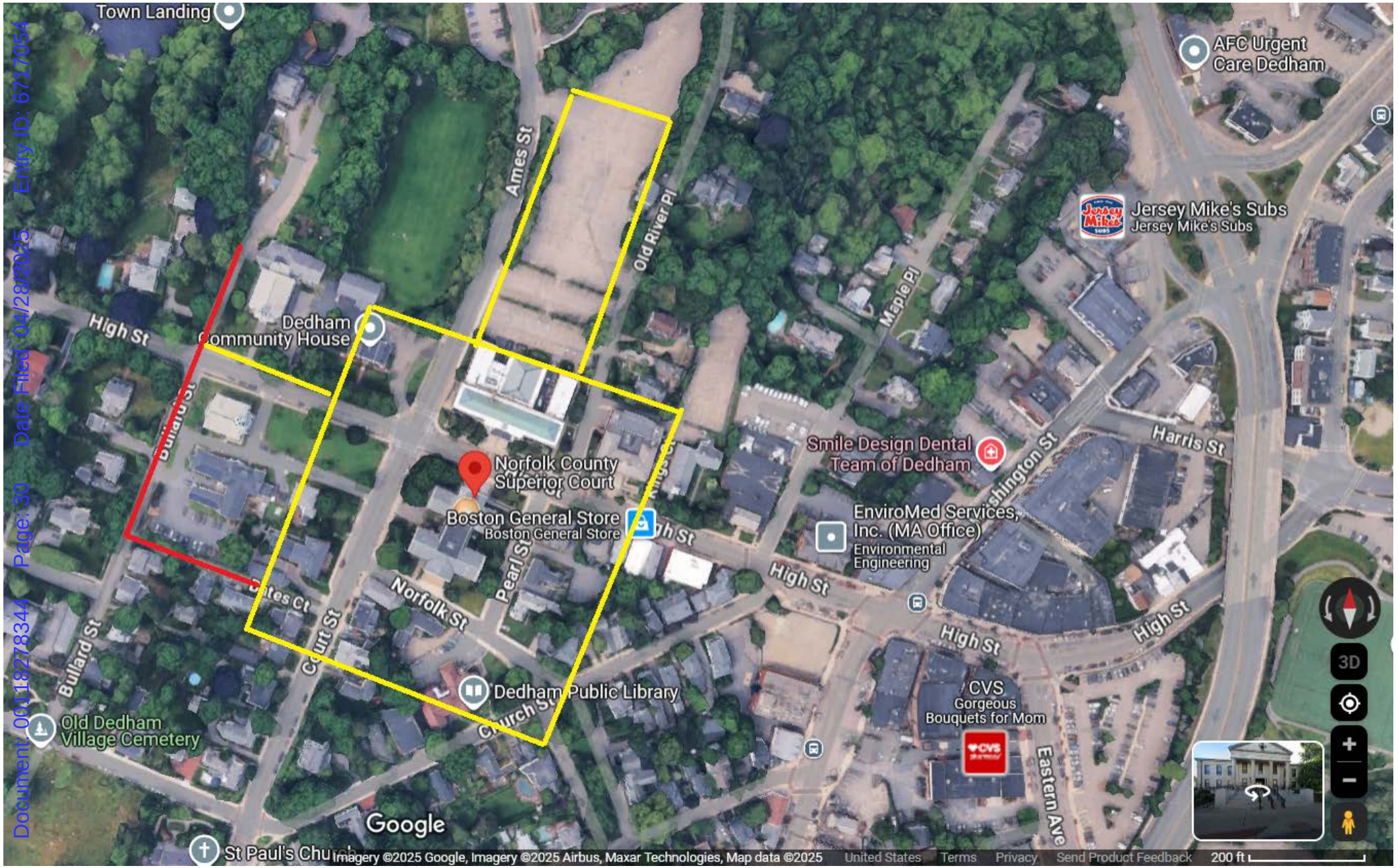

Yellow Denotes Prior Buffer Zone
Red Indicates Expanded Buffer Zone

DA issues rare statement condemning 'harassment,' 'innuendo' surrounding Karen Read case

Updated: 5:14 PM EDT Aug 25, 2023

Phil Tenser
Digital Media Manager

DEDHAM, Mass. — A Massachusetts district attorney on Friday issued an unusual public statement condemning the dissemination of false narratives and harassment of witnesses involved in the prosecution of Karen Read, who is charged in connection with the death of her boyfriend and has attracted widespread attention with allegations of a coverup.

Read is accused of hitting John O'Keefe, a Boston police officer, with her vehicle outside of a home in Canton after a night of drinking on Jan. 29, 2022. The home belonged to another

Boston police officer. O'Keefe was **found unresponsive** in the heavy snow outside a home on Fairview Road the following morning. He was taken to Good Samaritan Medical Center in Brockton and was pronounced dead several hours later.

Read and her attorneys have alleged that others are responsible for O'Keefe's death. Earlier this month, a **judge denied a request** from prosecutors to rein in statements made by the defense. That judge also denied a request from the defense to remove herself from the case.

Coverage of the case is widespread, appearing across numerous websites, **national television programs** and other publications.

In a lengthy video statement provided by his office on Friday afternoon, Norfolk District Attorney Michael Morrissey slapped back at the way people connected to the case are being treated.

"It should be an outrage to any decent person - and it needs to stop," Morrissey said.

The DA condemned the harassment of witnesses and the hurling of accusations at people other than those who are accused of a crime. He also said this is the first time in his 12 years as the county's top prosecutor that he has issued such a statement.

"These people were not part of a conspiracy and certainly did not commit murder or any crime that night. They have been forthcoming with authorities, provided statements, and have not engaged in any cover-up. They are not suspects in any crime – they are merely witnesses in the case," he said.

Throughout the lengthy statement, Morrissey responds to individual pieces of speculation and accusations with the evidence he says dispels them.

"I am asking the Canton community and everyone who feels invested in this case to hear all of the actual evidence at trial before assigning guilt to people who have done nothing wrong. And certainly before taking it upon yourself to harass citizens who, evidence shows, have done nothing in this matter but come forward and bear witness," he said.

Morrissey continued, "We try people in the court and not on the internet for a reason. The internet has no rules of evidence. The internet has no punishment for perjury. And the internet does not know all the facts."

In his statement, Morrissey also addressed the reason for the unique format of his remarks.

"I am releasing this as a recorded statement rather than holding a news conference because my remarks need to be so narrowly tailored to the issue at hand while the prosecution is pending in Superior Court," he said.

Full transcript of Morrissey's statement:

This will be the first statement of its kind in my dozen years as Norfolk District Attorney.

The harassment of witnesses in the murder prosecution of Karen Read is absolutely baseless.

It should be an outrage to any decent person - and it needs to stop.

Innuendo is not evidence.

False narratives are not evidence.

However, what evidence does show is that John O'Keefe never entered the home at 34 Fairview Road in Canton on the night he died. Location data from his phone – recovered from the lawn beneath his body when he was transported to the hospital – shows that his phone did not enter that home.

Eleven people have given statements that they did not see John O'Keefe enter the home at 34 Fairview that night. Zero people have said that they saw him enter the home. Zero. No one.

Some have, without any evidence, pointed to 18-year-old Colin Albert, a nephew of the

homeowner, and accused him of attacking John O'Keefe as he entered the home. But phone evidence shows O'Keefe never entered the home at all.

Testimony from witnesses tells us that 18-year-old Colin Albert had left his uncle's home before John O'Keefe and Karen Read had arrived outside the residence.

There was no fight inside that home.

John O'Keefe did not enter the home.

Colin Albert, the young man being vilified, was not present when Read's vehicle and John O'Keefe arrived on the street. That is a false narrative.

Colin Albert did not commit murder. Jennifer McCabe, Matthew McCabe, Brian Albert…these people were not part of a conspiracy and certainly did not commit murder or any crime that night. They have been forthcoming with authorities, provided statements, and have not engaged in any cover up. They are not suspects in any crime – they are merely witnesses in the case.

To have them accused of murder is outrageous. To have them harassed and intimidated based on false narratives and accusations is wrong. They are witnesses doing what our justice system asks of them.

The autopsy of John O'Keefe was conducted by a forensic pathologist from the Office of the Chief Medical Examiner. The doctor found that the injuries that left John helpless in the cold were not the result of a fight. She further found that the line of abrasions on his arm was consistent with blunt trauma – not an animal attack.

A grand jury of everyday citizens heard the documented evidence and testimony before making its decision. The subject of that murder indictment enjoys the Constitutional presumption of innocence.

Why should the witnesses, who have committed no crime, be afforded less by members of

the community? They should not be harassed for telling the government what they heard or saw.

I am asking the Canton community and everyone who feels invested in this case to hear all of the actual evidence at trial before assigning guilt to people who have done nothing wrong. And certainly before taking it upon yourself to harass citizens who, evidence shows, have done nothing in this matter but come forward and bear witness.

We try people in the court and not on the internet for a reason. The internet has no rules of evidence. The internet has no punishment for perjury. And the internet does not know all the facts.

Conspiracy theories are not evidence. The idea that multiple police departments, EMTs, Fire personnel, the medical examiner, and the prosecuting agency are joined in, or taken-in by, a vast conspiracy should be seen for what it is – completely contrary to the evidence and a desperate attempt to re-assign guilt.

Michael Proctor, the state police trooper being accused of planting evidence outside 34 Fairview Road, was never at Fairview Road on the day of the incident. Proctor and his state police partner traveled together the entire day, while other officers were processing 34 Fairview. Trooper Proctor was not there and did not plant evidence at 34 Fairview Road.

In addition to having no opportunity to plant evidence as has been suggested, Trooper Proctor would have no motive to do so: Trooper Proctor had no close personal relationship with any of the parties involved in the investigation, had no conflict, and had no reason to step out of the investigation. Every suggestion to the contrary is a lie.

This should all be seen for what it is – and not used as a pre-text to attack and harass others.

What is happening to the witnesses – some with no actual involvement in the case — is wrong.

It is contrary to the American values of fairness, and the Constitutional value of a fair trial.

It needs to stop now.

I am releasing this as a recorded statement rather than holding a news conference because my remarks need to be so narrowly tailored to the issue at hand while the prosecution is pending in Superior Court.

But the message is the same.

What is happening to these innocent people, these witnesses, is wrong and it needs to stop.

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U.S. NEWS

Michael Proctor, lead investigator in Karen Read case, fired from Massachusetts State Police after vulgar texts

Proctor was suspended without pay after Read's murder trial last summer.

Michael Proctor testifies in Norfolk Superior Court in Dedham, Mass., last year.

Kayla Bartkowski / The Boston Globe via AP, Pool file

March 19, 2025, 11:02 AM EDT

By Tim Stelloh and Terry Dickerson

The Massachusetts State Police investigator who was suspended over allegations of

misconduct in the Karen Read murder case has been fired, state law enforcement officials said Wednesday.

The State Police Trial Board made the decision to dishonorably discharge Michael Proctor, who led the investigation into the 2022 death of Read's boyfriend, a Boston police officer, after three days of hearings that began in January.

The trial board found Proctor guilty of three charges of unsatisfactory performance and one charge of consumption of alcohol while on duty from January to August 2022.

The charges stem from Proctor's sending "derogatory, defamatory, disparaging, and/or otherwise inappropriate text messages about a suspect in that investigation to other individuals." Proctor also consumed alcohol on duty and proceeded to operate his department-issued cruiser in July 2022.

Proctor's family said Wednesday that it was "truly disappointed" with the board's decision, "as it lacks precedent, and unfairly exploits and scapegoats one of their own, a trooper with a 12-year unblemished record."

"Despite the Massachusetts State Police's dubious and relentless efforts to find more inculpatory evidence against Michael Proctor on his phones, computers and cruiser data, the messages on his personal phone – referring to the person who killed a fellow beloved Boston Police Officer – are all that they found," the family said in a statement.

"The messages prove one thing, and that Michael is human – not corrupt, not incompetent in his role as a homicide detective, and certainly not unfit to continue to be a Massachusetts State Trooper," the statement added.

State police did not immediately respond to a request for comment.

Proctor was relieved from his post with the Norfolk County District Attorney's Office immediately after Read's nine-week trial ended with a hung jury last summer. He was suspended without pay days later.

Read was charged with second-degree murder and other crimes in the Jan. 29, 2022, death of John O'Keefe, a 16-year veteran of the Boston Police Department. Her retrial is scheduled to begin April 1.

During the trial, Read's lawyers accused Proctor of manipulating evidence and conducting a biased investigation. They based the allegation in part on text messages he sent to friends,

relatives and supervisors that showed him using offensive and vulgar language to describe Read.

In one instance, Proctor sent a text to his sister saying he hoped Read died by suicide.

In testimony, Proctor acknowledged that his comments were unprofessional and that they "dehumanized" Read, but he said they did not compromise the integrity of the investigation.

Proctor also acknowledged having discussed parts of the investigation with his sister but said he was only making her aware of "newsworthy stuff."

The official who led state police at the time said the agency had opened an internal investigation into Proctor's conduct after allegations of "serious misconduct" emerged at the trial.

During the proceedings, prosecutors described Read's two-year relationship with O'Keefe as increasingly troubled, and they accused her of striking her boyfriend with her Lexus SUV outside a party with other law enforcement officers after a night of drinking.

Norfolk County Assistant District Attorney Adam Lally accused Read of leaving O'Keefe to die outside the home of one of the officers – Brian Albert, then a Boston police sergeant.

O'Keefe was found unresponsive outside Albert's suburban home on the morning of Jan. 22. He was pronounced dead shortly after.

Read's lawyers described the killing as a far-reaching conspiracy among some of the officers who were at the party, including an agent with the Bureau of Alcohol, Tobacco, Firearms and Explosives who had flirted with Read.

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